

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Gerald Ice,

Plaintiff,

Case No. 2:24-cv-02219-GMN-BNW

ORDER

Plaintiff Gerald Ice initiated this case with a motion for appointment of counsel. (ECF No. 1-1.) On December 9, 2024, this Court ordered Ice to file a complaint and file an application to proceed *in forma pauperis*, or pay the full \$405 filing fee, on or before February 4, 2025. (ECF No. 3.) The Court warned Ice that the action could be dismissed if he failed to file a complaint and a file fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$405 filing fee for a civil action by that deadline. (*Id.* at 2.) That deadline expired, and Ice did not file a complaint, file a fully complete application to proceed *in forma pauperis*, pay the full \$405 filing fee, or otherwise respond.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s

1 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;  
2 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
3 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*  
4 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
5 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

6 The first two factors, the public's interest in expeditiously resolving this litigation  
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Ice's claims.  
8 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because  
9 a presumption of injury arises from the occurrence of unreasonable delay in filing a  
10 pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542  
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
12 cases on their merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can  
14 be used to correct the party's failure that brought about the Court's need to consider  
15 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
16 that considering less drastic alternatives *before* the party has disobeyed a court order  
17 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th  
18 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
19 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court's  
20 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled  
21 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).  
22 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
23 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
24 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until  
25 and unless Ice files a complaint and either files a fully complete application to proceed *in*  
26 *forma pauperis* or pays the \$405 filing fee for a civil action, the only alternative is to enter  
27 a second order setting another deadline. But the reality of repeating an ignored order is

1 that it often only delays the inevitable and squanders the Court's finite resources. The  
2 circumstances here do not indicate that this case will be an exception: there is no hint  
3 that Ice needs additional time or evidence that he did not receive the Court's order.  
4 Setting another deadline is not a meaningful alternative given these circumstances. So  
5 the fifth factor favors dismissal.

6 **II. CONCLUSION**

7 Having thoroughly considered these dismissal factors, the Court finds that they  
8 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without  
9 prejudice based on Ice's failure to file complaint and file a fully complete application to  
10 proceed *in forma pauperis* or pay the full \$405 filing fee in compliance with this Court's  
11 December 9, 2024, order. The Clerk of Court is directed to enter judgment accordingly  
12 and close this case. No other documents may be filed in this now-closed case. If Ice  
13 wishes to pursue his claims, he must file a complaint in a new case.

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15 DATED: February 11, 2025.

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19 Gloria M. Navarro, Judge  
20 United States District Court  
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